

1 **Attorney name
2 and Address**

3 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
4 **COUNTY OF **COUNTY****
5 **SITTING AS A JUVENILE COURT**

6 In the Matter of

7 **MINOR**

8 A Person Coming Within
9 the Jurisdiction of the Juvenile Court

Superior Court No.
NUMBER

10 **PETITION TO MODIFY PREVIOUS ORDERS**
11 **CHANGE IN CIRCUMSTANCES - NEW EVIDENCE**

12 TO THE HONORABLE **JUDGE** AND TO THE PEOPLE OF THE STATE OF
13 CALIFORNIA:

14 Comes the minor by counsel and requests that this Court grant the petition to
15 modify the minor's commitment. This verified petition is filed under the authority of
16 California Rules of Court, rules 5.560 and 5.570 and Welfare & Institutions Code section
17 778, and supported by the memorandum of points and authorities and argument, and by
18 further arguments and evidence to be presented at the hearing on the petition.

19 This petition is addressed to the Superior Court of the County of **COUNTY**,
20 sitting as a Juvenile Court.

21 The title and action number of the original proceeding is set forth above.

22 The name of the minor is **NAME**. His age is **AGE** years, and his current
23 address is the California Youth Authority, **ADDRESS.**

24 His parents' last known addresses are: **NAMES AND ADDRESSES.**

25 The order sought to be modified was entered on October 8, 2003, and resulted in
26 the minor's commitment to the California Youth Authority.

27 The change in circumstances justifying a new and different commitment order is
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1 that new evidence has come to light that indicates that a commitment to the California
2 Youth Authority is not in the minor's best interests.

3 The petitioner requests that this Court's order committing the minor to the
4 California Youth Authority be modified to a less restrictive placement to be determined
5 after an updated probation report has been prepared.

6 The petitioner is the minor's attorney.

7 It is not known whether all the parties agree to the proposed change.

8 (Cal. Rules of Court, rule 5.570(a)(10).)

9 Dated: _____

10 Respectfully submitted,

11 _____
12 ****ATTORNEY****
13 Attorney for the Minor

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16 * * *

VERIFICATION

I am the attorney appointed to represent the minor in this action. I have read the foregoing petition and know the contents to be true of my own knowledge, except as to those facts supported by citations to the record, exhibits or other documents.

I declare under penalty of perjury that the above is true and correct and that this verification was executed on _____, _____ at _____, California.

****ATTORNEY****
Attorney for the Minor

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. THIS COURT HAS THE AUTHORITY TO MODIFY ITS**
3 **PREVIOUS ORDERS AT ANY TIME**

4 Welfare & Institutions Code section 778¹ grants juvenile courts the authority to
5 modify their orders at any time. California Rules of Court, rule 5.560 implements that
6 grant of authority, and provides that the petition may be brought by, *inter alia*, the
7 attorney for the child "if the requested modification is not for a more restrictive level of
8 custody." (Cal. Rules of Court, rule 5.560(e)(1).)

9
10 California Rules of Court, Rule 5.560(f) also provides that clerical errors in
11 judgments, orders, or other parts of the record may be corrected by the trial court at any
12 time on the court's own motion or on motion of any party and may be entered *nunc pro*
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15 _____
16 ¹Welfare & Institutions Code section 778 states:

17 Any parent or other person having an interest in a child who is a ward of the juvenile
18 court or the child himself through a properly appointed guardian may, upon grounds of
19 change of circumstance or new evidence, petition the court in the same action in which
20 the child was found to be a ward of the juvenile court for a hearing to change, modify, or
21 set aside any order of court previously made or to terminate the jurisdiction of the court.
22 The petition shall be verified and, if made by a person other than the child, shall state the
23 petitioner's relationship to or interest in the child and shall set forth in concise language
24 any change of circumstance or new evidence which are alleged to require such change of
25 order or termination of jurisdiction.

26 If it appears that the best interests of the child may be promoted by the proposed change
27 of order or termination of jurisdiction, the court shall order that a hearing be held and
28 shall give prior notice, or cause prior notice to be given, to such persons and by such
means as prescribed by Sections 776 and 779, and, in such instances as the means of
giving notice is not prescribed by such sections, then by such means as the court
prescribes.

1 *tunc.*

2 California Rules of Court, Rule 5.570 sets forth the procedure. It provides that if
3 the minor states a change in circumstance or new evidence and it appears that the best
4 interest of the minor may be promoted by the proposed change, the court must order a
5 hearing within 30 calendar days after the petition is filed, unless there is no opposition to
6 the proposed change, in which case the petition may be granted without a hearing. (Cal.
7 Rules of Court, rule 5.570(e) and (f).) Evidence may be presented by declarations or other
8 documentary evidence, at the court's discretion, and the petitioner bears the burden of
9 proving by a preponderance of the evidence that "the ward's welfare requires the
10 modification." (Cal. Rules of Court, rule 5.570(i).)
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15 **II. THE CALIFORNIA YOUTH AUTHORITY CANNOT MEET**
16 **THE MINOR'S NEEDS AND THE COMMITMENT IS NOT IN**
17 **THE MINOR'S BEST INTERESTS**

18 **A. The Prior History of the Case**

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20 **B. The Dispositional Hearing**

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1 **C. The Objectives of the Juvenile Law Continue to be**
2 **Rehabilitation of the Minor**

3 Despite a "slight shift in emphasis, rehabilitation continues to be an important
4 objective of the juvenile court law." The law "contemplates a progressively restrictive and
5 punitive series of dispositional orders...namely home placement under supervision, foster
6 home placement, placement in a local treatment facility and, as a last resort, Youth
7 Authority placement." (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576, 578.)

8
9 The leading case of *In re Aline D.* (1975) 14 Cal.3d 557,² remains authority that a
10 CYA commitment is a last resort:
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12 As is evident from the applicable statutes, "Commitments to the
13 California Youth Authority are made only in the most serious cases and
14 only after all else has failed." (Thompson, *Cal. Juvenile Court Deskbook*,
15 section 9.15, p. 123.) This concept is well established and has been
16 expressed by the CYA itself. In light of the general purposes of juvenile
17 commitments expressed in Welfare and Institutions Code section 502, [now
18 202] discussed above, "...commitment to the Youth Authority is generally
19 viewed as *the final treatment resource* available to the juvenile court and
20 which least meets the description in the above provision. [Cit.om.] Within
21 the Youth Authority system, there is gathered from throughout the State
22 the most severely delinquent youths which have exhausted local
23 programs." (*California Youth Authority Criteria and Procedure for*
24 *Referral of Juvenile Court Cases to the Youth Authority* (1971) p. 1.) (*In re*
25 *Aline D., supra*, 14 Cal.3d at p. 564, emphasis in original.)

26 While it is true that a Youth Authority commitment may be imposed without
27 previous resort to less restrictive placements (*In re Asean D., supra* at p. 473; *In re*
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26 ²Referred to as "[t]he premier case authority" in the 1989 case of *In re Teofilio*
27 *A., supra*, 210 Cal.App.3d at p. 577.

1 Tyrone O. (1989) 209 Cal.App.3d 145, 151), the juvenile court must still articulate, and
2 the record must support, a probable benefit to the minor from such a commitment and the
3 inappropriateness or ineffectiveness of less restrictive alternatives. (*In re Pedro M.* (2000)
4 81 Cal.App.4th 550, 555; *In re Teofilio A.*, *supra*, 210 Cal.App.3d at pp. 576-577; *In re*
5 *Angela M.* (2003) 111 Cal.App.4th 1392, 1396.)

7 In *In re Charles C.* (1991) 232 Cal.App.3d 952, the appellate court noted that the
8 fact that the legislature in 1984 had amended Welfare and Institutions Code section 202 to
9 put an increased emphasis on punishment "did not alter the overall rehabilitative aspect of
10 the juvenile justice system," (*In re Charles C.*, *supra*, 232 Cal.App.3d at p. 960, citing to
11 *In re Ismail A.* (1989) 207 Cal.App.3d 911, 915-920.)

14 Welfare and Institutions Code section 202, as amended in 1984, provides in
15 relevant part that,

17 (a) The purpose of this chapter is to provide for the protection and safety of
18 the public and each minor under the jurisdiction of the juvenile court and to
19 preserve and strengthen the minor's family ties whenever possible,
20 removing the minor from the custody of his or her parents only when
21 necessary for his or her welfare or for the safety and protection of the
22 public.

23 (b) Minors under the jurisdiction of the juvenile court as a consequence
24 of delinquent conduct shall, in conformity with the interests of public safety
25 and protection, receive care, treatment, and guidance that is consistent with
26 their best interest, that holds them accountable for their behavior, and that is
27 appropriate for their circumstances. This guidance may include punishment
28 that is consistent with the rehabilitative objectives of this chapter.

...

1 Subdivision (e), sets forth a list progressive list of "sanctions" deemed appropriate
2 "punishment" for juvenile offenders: (1) payment of a fine by the minor; (2) rendering
3 compulsory service; (3) limitations on the minor's liberty imposed as a condition of
4 probation or parole; (4) commitment of the minor to a local detention or treatment
5 facility, such as a juvenile hall, camp, or ranch; (5) commitment to the Department of the
6 Youth Authority. (See, *In re Lorenza M.* (1989) 212 Cal.App.3d 49, 58.) Subdivision (e)
7 ends by stating, "[p]unishment,' for the purposes of this chapter, does not include
8 retribution."
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11 Other statutes also emphasize that the focus is still primarily on the minor, and
12 not just on the crime committed. Welfare and Institutions Code section 725.5, added in
13 1982, provides that:
14

15 In determining the judgment and order to be made in any case in
16 which the minor is found to be a person described in Section 602, the court
17 shall consider, in addition to other relevant and material evidence, (1) the
18 age of the minor, (2) the circumstances and gravity of the offense
19 committed by the minor, and (3) the minor's previous delinquent history.

20 The section thus provides that two out of the three criteria the court must consider
21 focus on the offender, and only one on the offense.

22 Welfare and Institutions Code section 734 provides that:

23 No ward of the juvenile court shall be committed to the Youth Authority
24 unless the judge of the court is fully satisfied that the mental and physical
25 condition and qualifications of the ward are such as to render it probable that he
26 will be benefited by the reformatory educational discipline or other treatment
27 provided by the Youth Authority.

28 In short, a commitment to the Youth Authority must be shown to have a benefit to

1 the ward. Mere punishment is not enough.

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3 **D. The California Youth Authority Cannot Provide**
4 **Adequate Treatment**

5 A slew of reports and findings, including some commissioned by the California
6 Attorney General, makes clear that the Authority does not provide the treatment required
7 by the minor.
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9 **The Inspector General's Report of November 2002**

10 The November 2002 report of the Office of the Inspector General on the California
11 Youth Authority's intensive treatment program³ (hereafter "Inspector General's Report;"
12 Exhibit A) relied upon earlier studies, one by a team of researchers from Stanford
13 University released in December 2001, and another by experts in the constitutional
14 requirements for mental health treatment in correctional settings, commissioned by the
15 Youth Authority itself and released in July 2001. These were documents with which Dr.
16 Johnston must surely have been acquainted, though he failed to mention them in his
17 report or in his testimony.⁴ The Inspector General's report concluded that the "program
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22 ³The program provides treatment to wards with significant mental health
23 disorders. (Inspector General's Report, p. 3.)

24 ⁴The review of the program was conducted by the Office of the Inspector
25 General in consultation with Dr. Barry Krisberg, Ph.D, president of the National Council
26 on Crime and Delinquency, Dr. Madeline Wordes, Ph.D, of the same council, and
27 Claude Arnett, M.D., a former staff psychiatrist at the University of California, Davis,
28 who at the time of the report was a contract psychiatrist for the Sacramento County
Juvenile Hall and maintained a private practice in psychiatry. It is difficult to imagine
that Dr. Johnston, himself in private practice in Sacramento County, was not acquainted

1 presently serves only a small percentage of wards suffering from severe forms of mental
2 illness and that the treatment provided is generally substandard." (Inspector General's
3 Report, p. 3.)
4

5 The "vast majority of wards needing mental health treatment are housed in the
6 general population, where, for the most part, they receive no mental health services at
7 all." (Inspector General's Report, pp. 4, 10.) As with Dr. Johnston's glowing reports of the
8
9 CYA's programs, the "treatment portrayed in the written descriptions of the intensive
10 treatment programs bears little resemblance to the treatment actually provided to the
11 wards:"
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13 The program descriptions typically promise a range of treatment methods
14 and an individualized treatment plan for each ward. In reality, treatment is
15 limited for the most part to one or two hours a week of group therapy and
16 individual counseling provided by a youth correctional counseling with
17 little counseling experience or training. Individualized treatment plans are
18 nonexistent. Wards may see a psychologist only once a month, if that, and –
19 if they are on psychotropic medication – may also see a psychiatrist
20 periodically, usually about once a month. Treatment is poorly documented
21 and there appears to be little communication and coordination between staff
22 psychologists and psychiatrists or between the youth correctional counselors
23 and the professional staff. *In general, treatment is substandard.* (Inspector
24 General's Report, pp. 5, 18, emphasis added.)
25

26 When the staff operating the programs was asked how the various treatment
27 techniques described in the CYA's literature actually worked, they responded, "we aren't
28 using most of those," because no one on the staff was trained in the techniques. For
29 example, the "family counseling" touted in the descriptions consisted of making staff

with at least one of these experts and their studies.

1 available during visiting hours to speak to family members upon request. The Inspector
2 General found "no documentation of the use of family counseling as a therapy tool."
3 Many of the wards received no visitors. (Inspector General's Report, p. 19.)
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5 The so-called therapy sessions in reality consist of one to two hours a week of
6 small and large group therapy and one hour weekly individual counseling conducted by
7 counselors who had received as little as five hours of peace officer training and 20 hours
8 of casework and treatment training. (Inspector General's Report, p. 20.) Many of the
9 wards had not received even the minimum individualized counseling. Psychologists meet
10 with the wards "whenever they can." (Id. at pp. 20-21.)
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13 The Inspector General found "no evidence" of treatment plans, "nothing outlining
14 the ward's mental health problems, nothing outlining the ward's mental health problems,
15 no documentation about the ward's progress in the program, nothing linking the ward's
16 progress with the treatment provided, and nothing defining the responsibilities of each
17 treatment team member in treating the ward." (Inspector General's Report, p. 21.)
18

19 Because of inadequate intake evaluations by staff psychologists, "treatment
20 appeared to be directed toward alleviating symptoms rather than addressing underlying
21 causes." (Inspector General's Report, p. 22.) "Psychiatric assessments of new admittees ...
22 were brief and superficial. None ... included all the relevant facts available from the
23 records Sometimes the psychiatrist's notes even failed to include a diagnosis. None of
24 the notes included a complete problem list or a well-thought-out treatment plan."
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1 (Inspector General's Report, p. 22.)⁵

2 In addition, the Inspector General found that psychiatrists did not document
3 reasons for placing wards on psychotropic medication, did not adequately document
4 response to medication, did not meet community standards in general for documenting
5 treatment, failed to obtain parental consent for psychotropic medication, poorly
6 documented their treatment, coordinated treatment badly. "Treatment in general is
7 frequently substandard," the Inspector General concluded. (Inspector General's Report,
8 pp. 22-25.)
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11 "[T]he majority of intensive treatment program wards leaving the program are
12 likely to receive no further treatment for their mental illness" after they leave the intensive
13 treatment program. Sixty-nine percent were either transferred to the general population or
14 released on parole. (Inspector General's Report, p. 5.)
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17 The Inspector General found that the Authority provided 119 beds targeted for sex
18 offenders within the intensive treatment programs. Although under the terms of an earlier
19 court order the Authority was mandated to establish licensed correctional treatment
20 centers by December 27, 2002, it had not done so as of the writing of the report.(Inspector
21 General's Report, p. 7.)
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23 Far from denying the problems outlined by the Inspector General, the then-
24 Director of the California Youth Authority, Jerry Harper, responded that he recognized
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26 ⁵The original report contained examples, but all the examples were redacted by
27 the Youth Authority from the copy of the report made available to counsel.

1 that "our strategic mental health vision requires much additional work," but said that he
2 believed "the department has made much progress" since the Inspector General's last
3 report. Director Harper took no issue with any of the findings. (Response of the
4 California Youth Authority, addendum to Inspector General's Report, following p. 39.)

6 **The Byrnes Report of August 2002**

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8 In August of 2002, at the request of the California State Senate Joint Committee on
9 Prison and Construction Operations, Michele Byrnes, Daniel Macallair, MPA, and
10 Andrea D. Shorter of the Center on Juvenile and Criminal Justice, prepared a report
11 entitled "Aftercare as Afterthought: Reentry and the California Youth Authority"
12 (hereafter "Byrnes Report;" Exhibit B).

14 The report concluded that

15 [t]he reentry process for CYA parolees fails to adequately prepare them for
16 an independent, self-sufficient lifestyle outside of a correctional institution.
17 The current system is highly fragmented and relies on CYA parole agents⁶
18 who, despite the best of intentions, face significant obstacles to providing
19 effective services. Constrained by caseloads as high as fifty parolees or
20 more, no specialized training, and insufficient resources to even provide
21 each parolee with a bus pass, parole agents are nonetheless responsible for
22 providing parolees with services critical to a successful transition in their
23 communities. (Byrnes Report, p. iii.)

24 Citing a recent study by the Bureau of Justice Statistics, the authors reported that
25 "91% of youth offenders released from the CYA will re-offend" within 3 years. (Byrnes
26 Report, p. 1.) Only 11.5% of students at the CYA pass the California High School Exit

27 ⁶In 2002, there were 16 parole agents to serve the needs of all CYA parolees.
28 (Byrnes Report, p. 20.)

1 Exam. (Byrnes Report, p. 10.) A ward may be considered for parole only after completing
2 an individualized series of programs mandated by the parole board, such as substance
3 abuse counseling, individual counseling, anger management, and gang awareness. The
4 program requirements are set by parole board members who have no training in mental
5 health. Yet access to these programs is often limited by the availability of beds, and many
6 wards spend additional time at the Youth Authority just waiting for a program bed to
7 become available. (Byrnes Report, pp. 16-17.)
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10 In 2002, parolees⁷ were supervised by sixteen parole officers scattered throughout
11 the state, some in remote locations difficult to reach by public transportation. The agents
12 are not likely to have contact with the social workers, teachers or probation officers who
13 knew the parolees best. The situation is likely to become worse instead of better. The
14 proposed governor's budget for 2002-2003 included a \$5 million reduction in parole
15 services. (Byrnes Report, pp. 20-21.)
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18 **The Thomas Report of September 2003**

19 A report dated September 29, 2003, by Jerry Thomas Consulting and Training,⁸
20 concludes that
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22 ... the California Youth Authority rehabilitative programs for juvenile
23 sexual offenders does not meet currently recognized standards of practice in

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25 ⁷More than 2,000 of whom are released every year. (Byrnes Report, p. 3.)

26 ⁸The report was based on numerous interviews with staff and wards, and an
27 exhaustive examination of the relevant literature. (See Thomas Report, Addendum B, pp.
28 1-14.)

1 the field. That is not to say that there aren't some very competent
2 professionals working in the sex offender programs, or that some of the
3 offense specific programming components are not well conceived and
4 delivered. Unfortunately, the programs are missing some critical
5 components, for example a comprehensive assessment, evaluation, and
6 treatment planning policy and procedure. Programs and staff are constantly
7 cut because of budget problems and staff are not regularly trained either in
8 intervening or behavior management with sexually abusive youth. The staff
9 is not always selected to meet the needs of the wards, but to meet the needs
of the staff. Finally, the overall culture of the programs is institutional and
punitive rather than rehabilitative. (Thomas, "Evaluation of Sex Offender
Programs, the California Youth Authority" (hereafter "Thomas Report"
(September 29, 2003), p. 4; Exhibit C).

10 The Thomas Report states that only about 160 sexually abusive wards are being
11 treated at the Youth Authority, leaving over 900 untreated. (Thomas Report, p. 12.) About
12 340 wards were on parole, and "it was not known who had received treatment and who
13 had not without a great deal of research." (Ibid.) "This means that approximately 900
14 sexually abusive youth are paroled without any treatment at all." (Ibid.)
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17 What this statistic means is that there is a four in five chance that Vincent would
18 be paroled from the Youth Authority without having received any treatment at all.

19 In addition, most of the vocational programs, some of which the report found
20 "excellent," are not open to the sexually abusive youth. (Thomas Report, pp. 13; 36.) That
21 means that youth such as this minor would re-enter the community without vocational
22 training.
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25 The report found the physical environment of the CYA institutions "not good ...
26 even by prison standards." (Thomas Report, p. 18.) In one facility the showers and toilets
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1 are separated from the living quarters only by a torn curtain. The report noted that "[t]his
2 is not acceptable in a sex offender program for obvious reasons. (Ibid.) In one program,
3 wards were housed 50 to a room, supervised by one guard in a tower. The youths reported
4 feeling unsafe, being kept awake by other wards masturbating, and wetting their beds
5 because they were afraid to go to the bathroom. Others reported being locked in their cells
6 for long periods of time, cold water, bad smells, mildew and mold, and no heat. (Thomas
7 Report, p. 18.)
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10 The assessment of the wards is woefully inadequate. The CYA's plan for 2004 is to
11 implement an individualized treatment plan for each ward, but the plan "does not include
12 sex offender specific treatment planning." (Thomas Report, p. 22.)
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14 "CYA programs offer no individual sessions, 1-2 hours of group sessions a week,
15 and no family sessions except on very rare occasions." By contrast, a survey of 91
16 residential treatment programs throughout the nation revealed that 1.27 hours were spent
17 in individual sessions, 3.7 hours in group sessions, and .81 hours in family sessions.
18 (Thomas Report, p. 24.)
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20 "The CYA has a limited amount of substance abuse programs and it is not unusual
21 for there to be a waiting period for space." (Thomas Report, p. 27.)
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23 The CYA, "instead of developing a therapeutic culture, has allowed a counter-
24 productive prison culture to develop." (Thomas Report, p. 29.) Mace is the "current
25 method of behavior control." It is used for refusing to follow instructions, distracting
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1 staff, masturbating in front of female staff, kicking doors, etc. Some of the wards
2 apparently have come to like the pain inflicted by the Mace. (Thomas Report, p. 32.)

3 "... [T]eachers are not trained in working with sexually abusive youth, and so do
4 not know how to confront abusive behavior, redirect sexualized behavior, or to keep their
5 classrooms safe." (Thomas Report, p. 34.)

6 All the CYA does is to provide post-release parole services is to coordinate with
7 "some" county parole offices for offense specific aftercare services. (Thomas Report, p.
8 39.)

9 Despite the importance of highly trained and motivated staff in the successful
10 treatment of sex offenders, in the CYA system the hiring and assignment process
11 negotiated with the staff's union results in giving "first choice to people regardless of their
12 qualifications – or lack of qualifications" (Thomas Report, p. 40.) The training of staff
13 was also found to be deficient by the report. Indiana, Utah, Ohio, Minnesota, Oregon and
14 Washington, as well as Arkansas, had formal training programs in effect that California
15 did not. The CYA does not even have a policies and procedures manual for sex offender
16 treatment. (Thomas Report, pp. 43-45.)

17 **The Trupin Report of December 2003**

18 In December of 2003, Dr. Eric Trupin, PhD. and Dr. Raymond Patterson, M.D.,
19 prepared a report entitled "Report of Findings of Mental Health and Substance Abuse
20 Treatment Services to Youth in California Youth Authority Facilities" (hereafter "Trupin
21

1 Report;" Exhibit D).

2 In addition to summarizing the findings of the experts, the report responded to the
3 twenty-two areas of inquiry put forward by the California Attorney General. (Trupin
4 Report, p. 2.) The report was based on the experts' own observations, numerous
5 interviews, and a review of documents provided by the California Youth Authority, the
6 report of the Inspector General, the Stanford report, and the Dvoskin and Kosan report.
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8 (Trupin Report, p. 2.)

10 Although the report acknowledged that "progress had been made to improve
11 services" during the previous six months, "the California Youth Authority continues to
12 fall short of meeting many recognized standards of care for youth with mental health and
13 substance abuse disorders." (Trupin Report, p. 3.)

15 Other conclusions were that the mental health care provided by the CYA "is not
16 adequate and does not conform to community standards identified in this report." There
17 was little evidence that youths suffering from substance abuse and mental health
18 problems had treatments for those problems. (Trupin report, pp. 9-14.) Appropriate
19 mental health quality assurance procedures had not been implemented. (Trupin report, p.
20 15.) The Authority did not have an adequate number of psychiatrists, and "there are
21 questions regarding the competence of several of the psychiatrists currently providing
22 care" There was also a need for an increase in the number and distribution of
23 psychologists. Although the number of caseworkers appeared adequate, the number of
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1 correctional counselors was not. (Trupin report, p. 15.) The number of ancillary
2 personnel, such as officers, nurses and pharmacists, was inadequate. (Trupin report, p.
3 16.) The training of mental health clinicians was "variable." Staff and officer misbehavior
4 continued to be "a source of significant concern for a number of mental health
5 professionals as well as many youth. (Trupin report, p. 16.) Incoming youths are not
6 appropriately screened. (Trupin report, p. 16.) The mental health records were not
7 consistently legible, not well organized, and may not include basic information. (Trupin
8 report, p. 17.) The CYA "does not provide adequate treatment to its general population
9 *The vast majority of youth who have mental health needs are made worse instead of*
10 *improved by the correctional environment."* (Trupin report, p. 17, emphasis added.) The
11 physical facilities varied. Some of the older facilities did not have adequate programming
12 space. The use of cages "does not adequately address the needs of the youths." (Trupin
13 report, p. 18.) The substance abuse beds were not adequate. (Trupin report, p. 19.)

14 The "CYA does not offer adequate rehabilitation or substance abuse programs."
15 The outpatient programs were "informal" and there was a waiting list for the intensive
16 programs. There was also a lack of vocational rehabilitation programs. (Trupin report, p.
17 20.) Youths who had been ordered to participate in rehabilitative programs by the parole
18 board could not get into them. There were waiting lists to get into the parole-ordered
19 programs, and substance abuse beds "were occupied at the rate of 100%." Youth who
20 could not get into the parole-ordered substance abuse programs would "end up with
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1 longer stays...." (Trupin report, pp. 20-21.) It was unclear whether the substance abuse
2 programs were effective, but there was "no evidence that the programs are effective"
3 The exception was DeWitt Nelson. (Trupin report, p. 21.) It was unclear whether staff
4 providing rehabilitative programs was adequately trained. "There is a weakness in
5 substance abuse programs relative to their integration with mental health treatment
6 programs. Youths who may be duly diagnosed with a mental illness and a substance abuse
7 problem do not have an integrated treatment plan that broaches all of their needs."
8 (Trupin report, p. 21.) Where substance abuse programs existed, the youths were able to
9 attend, except when staff was on leave. "However, there are not enough programs and,
10 other than ... at DeWitt Nelson, there does not appear to be an integrated focus on the
11 development of skills regarding life issues for the youths rather than just their substance
12 abuse." (Trupin report, p. 21.) Substance abuse programs were not adequate in the
13 restricted housing units, and there was a problem retaining staff because of safety issues.
14 (Trupin report, p. 22.) "[T]here are not adequate numbers of staff to provide the intensive
15 substance programs that are necessary for the youths who are identified with significant
16 substance abuse problems. The waiting lists for these programs continue." But the
17 numbers were not the problem; "rather it is the quality of the staff's training and
18 supervision that is most troublesome." (Trupin report, p. 22.)
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26 **The Krisberg Report of December 2003**

1 In December of 2003, Dr. Barry Krisberg, PhD., produced a report entitled
2 "General Corrections Review of the California Youth Authority" at the request of the
3 California Attorney General and the Youth Authority. (Krisberg Report, p. 2; Exhibit E.)
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5 Dr. Krisberg's conclusion relevant to this case were that: "YA is a very dangerous
6 place, and ... neither staff nor wards feel safe" (Krisberg Report, p. 18); "... a stunning
7 amount of violence ... at least 10 assaults every day." (Krisberg Report, p. 23); "... the
8 most youths were those with mental health problems, those labeled ... sex offenders, or
9 wards who were attempting to disengage from their prior gang affiliations" (Krisberg
10 Report, p. 27); "... many wards attempted to achieve some measure of personal safety by
11 getting placed in mental health units ..." (Krisberg Report, p. 28); "green lighting" of
12 "window warriors," which encouraged other wards to attack the "lighted" ward, usually
13 an immature ward who provokes others by yelling insults behind their locked doors
14 (Krisberg Report, pp. 28-29); the use by staff of "dangerous and potentially fatal"
15 chemicals to extract wards from their rooms (Krisberg Report, p. 30); forcing wards to
16 spend long periods of time on their knees with their hands bound behind them, sometimes
17 kneeling on sharp surfaces (called by staff "Gym TD"); forcing wards to sleep on cement
18 slabs in cold rooms wearing minimal clothing; and the infliction blows during these
19 incidents (Krisberg Report, p. 30); staff making angry, detrimental, sometimes racist and
20 sexist comments on a daily basis, which one CYA Ombudsperson described as "inherent
21 in the staff culture," and which some staff managers thought motivated the wards to
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1 improve themselves (Krisberg Report, pp. 33-34); the unnecessary use of forcible
2 "extractions" (Krisberg Report, p. 37); providing educational services and counseling
3 while restraining the wards in small "cages" (Krisberg Report, p. 51; 63);⁹ filthy
4 conditions in restricted housing (lockup) units (Krisberg Report, p. 53); twenty-three hour
5 confinements, the therapeutic value of which Dr. Krisberg found "hard to imagine"
6 (Krisberg Report, p. 53); and the inability or unwillingness on the part of staff to
7 "maintain even basic conditions of sanitation" in the lockup units, including one to which
8 the CYA director referred as a "dungeon" (Krisberg Report, p. 59).

11 **The O'Rourke Report of December 2003**

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13 In December of 2003, Dr. Thomas O'Rourke, the Associate Superintendent for
14 Education of the Georgia Department of Juvenile Justice and Dr. Robert Gordon, a
15 technical assistance consultant with the same entity, prepared a report in response to
16 thirteen questions posed by the California Attorney General regarding the Youth
17 Authority's general and special education programs. ("Education Program Review of
18 California Youth Authority" (2003), hereafter the O'Rourke Report, p. 1; Exhibit F.)¹⁰

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21 The authors concluded that the overall quality of the educational programs was
22 "adequate," and in some cases, exemplary. However, the Authority did not employ an
23 adequate number of credentialed teachers, was unable to attract and retain qualified
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25 ⁹"Cages" are not used in any other states. (Krisberg Report, p. 64.)

26 ¹⁰Deputy Attorney General Stephen Acquisto requested the program review from
27 Drs. O'Rourke and Gordon in December 2002.

1 teachers, its pupil to teacher ratios were imbalanced. (O'Rourke Report, p. 5.)

2 Absenteeism was high. Wards are routinely "pulled" from general and special
3 education classes to attend parole board mandated activities, "without regard for their
4 educational needs. *It is evident that education is not the primary focus during the school*
5 *day.*" (O'Rourke Report, p. 8, emphasis in original.) When a class is overcrowded, wards
6 are simply returned to their living units and do not receive any instruction. (O'Rourke
7 Report, p. 8.) In some institutions, wards are allowed to elect whether or not to attend
8 school. (O'Rourke Report, p. 9.) Classes are often cancelled. (O'Rourke Report, p. 13.)
9 Because of poor record-keeping and other problems, the authors were not able to even
10 determine exactly how many wards had received their high school diplomas or equivalent.
11 (O'Rourke Report, pp. 16-17.) Wards in restricted programs were not receiving a full 240-
12 minute instructional day, as required by law. (O'Rourke Report, p. 36.)

13 14 15 16 17 **E. The California Youth Authority Admits the Problems** 18 **Outlined in the Reports**

19 The California Youth Authority has admitted, through its spokeswoman Sarah
20 Ludeman, that "[t]hese reports are substantially correct." (Smith, *Adachi Urges Boycott of*
21 *Youth Authority*, S.F. Recorder (February 10, 2004, p. 9.)
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1 **CONCLUSION**

2 This minor deserves a chance, a real fighting chance, for rehabilitation, education,
3 treatment and therapy. None of these needs can be met at the Youth Authority. Far from
4 being rehabilitated, it is likely that the minor will return from the Authority a hardened
5 criminal, not a redeemed young person.
6

7 Dated: _____
8

9 Respectfully submitted,

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11 _____
12 ****ATTORNEY****
13 Attorney for the Minor
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PROOF OF SERVICE

I, the undersigned, say that I am over eighteen years of age and not a party to the above action. My business address is ****address.****

On _____, _____, I served the attached on the following by placing true copies thereof, enclosed in a sealed envelope with postage fully prepaid, in the United States Mail at _____, California, addressed as follows:

****minor****

Deputy District Attorney

****parents****

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, _____, at

_____, California

